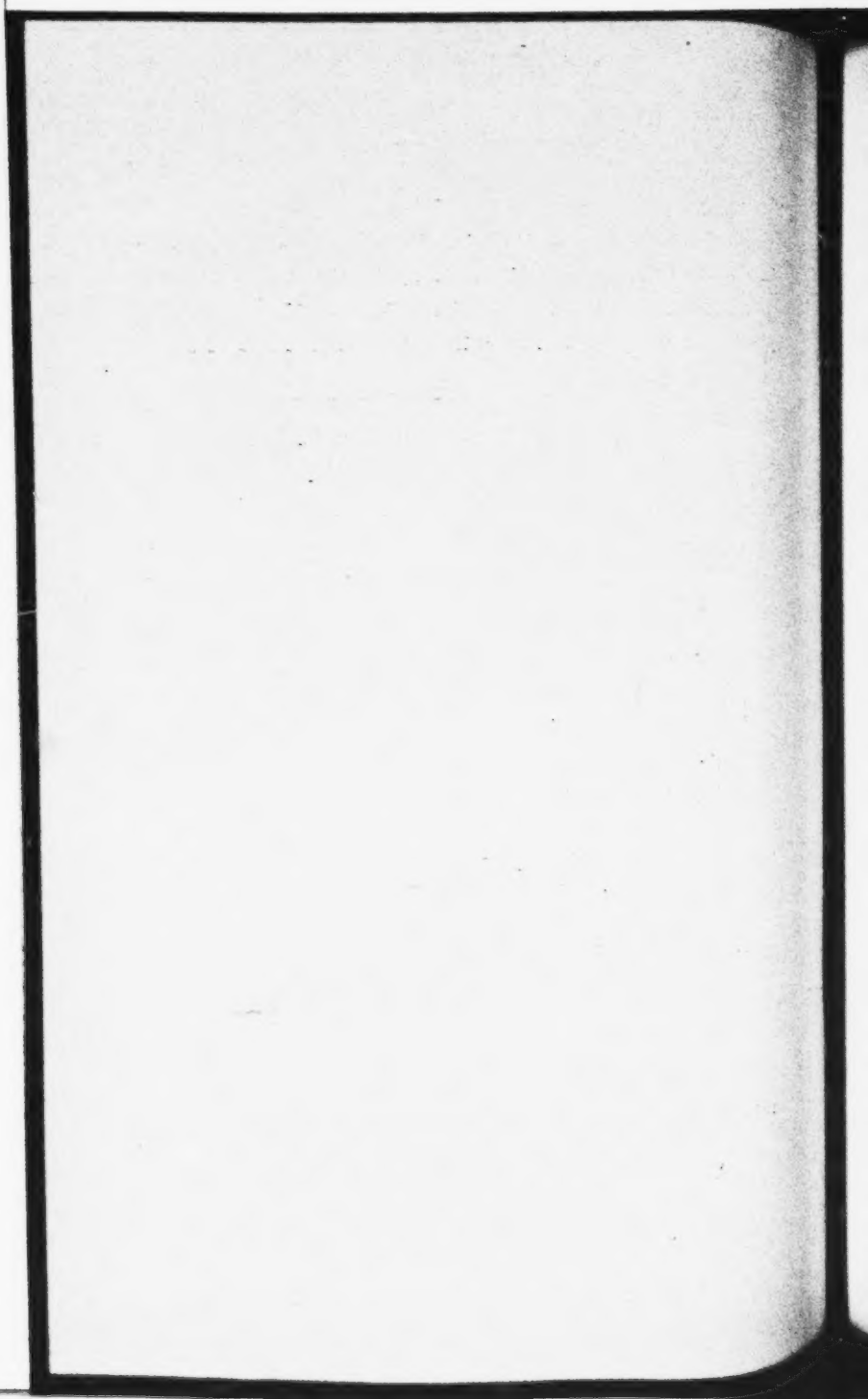

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IN THE

Supreme Court of the United States

October Term, 1970

No. 154

RONALD JAMES, *et al.*,

Appellants,

vs.

ANITA VALTIERRA, HOUSING AUTHORITY OF THE CITY OF SAN JOSE, *et al.*,

Appellees.

No. 226

VIRGINIA C. SHAFFER,

Appellant,

vs.

ANITA VALTIERRA, HOUSING AUTHORITY OF THE CITY OF SAN JOSE, *et al.*,

Appellees.

Appeals From the United States District Court for the Northern District of California.

BRIEF FOR APPELLEE HOUSING AUTHORITY OF THE CITY OF SAN JOSE.

Opinion Below.

The Opinion of the District Court is reported in 313 F. Supp. 1 (N.D. Cal. 1970) *sub. nom Valtierra v. Housing Authority of the City of San Jose, et al,* and *Hayes v. Housing Authority of San Mateo.* The Opinion appears in the Appendix at pp. 168-179.[1]

[1]Reference to the Appendix hereafter appears as "A".

Jurisdiction.

Jurisdiction of this appeal is founded upon 28 U.S.C. § 1253, in that injunctive relief was sought and obtained from a three-judge district court, constituted pursuant to 28 U.S.C. § 2281 and § 2284, against the enforcement of Article XXXIV of the Constitution of the State of California on the ground that it violates the Constitution of the United States both on its face and as applied.

Question Presented.

Does Article XXXIV of the California Constitution violate the equal protection clause of the Fourteenth Amendment to the United States Constitution by subjecting a decision of a local legislative body approving low rent public housing projects designed to benefit the urban poor, who consist of a disproportionately high percentage of racial minorities, to a special hurdle in the form of an automatic referendum not required with respect to other acts by such bodies?

Constitutional Provisions Involved.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> ". . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the Laws."

Article XXXIV of the California Constitution provides in pertinent part:

> ". . . No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county,

as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

"For the purpose of this article the term 'low rent housing project' shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. For the purposes of this article only there shall be excluded from the term 'low rent housing project' any such project where there shall be in existence on the effective date hereof, a contract for financial assistance between any state public body and the Federal Government in respect to such project.

"For the purposes of this article only 'persons of low income' shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

"For the purposes of this article the term 'state public body' shall mean this State, or any city, city and county, county, district, authority, agency, or any other subdivision or public body of this State."

Statement of Facts.

This is a direct appeal from a final judgment and decree entered April 2, 1970, by a three judge district court granting plaintiffs'-appellee's motions for summary judgment, declaratory judgment and a permanent injunction. The court below ruled that Article XXXIV of the California Constitution violates the equal protection clause of the Fourteenth Amendment by subjecting only low rent public housing projects to a special automatic referendum. This case originated as two separate class actions, one filed on behalf of plaintiffs in the City of San Jose, the other on behalf of plaintiffs in San Mateo County, California. The cases were consolidated for all purposes by the court below.

The plaintiffs below are all persons of low income (as defined by Article XXXIV), have been found eligible for public housing, and placed on the waiting lists of their local housing authorities.[2] A majority of the Hayes plaintiffs are black (A. 80-85) and a majority of the Valtierra plaintiffs have Spanish surnames (A. 1). They now live in overcrowded, rundown, substandard dwellings. For even this sort of unsafe, unsanitary and demeaning housing, they are required to pay rents that are exorbitant in light of their income, with the result that they are deprived of other necessities, such as food and clothing. These persons have not been placed in low-rent units by the local housing authorities because no units are presently available (A. 31,123).

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[2]At the time the complaints were filed there were over 2,000 families on the waiting list of the San Mateo County Housing Authority (A. 123) and 625 eligible families on the waiting list of the Housing Authority of the City of San Jose (A. 10). All the *Valtierra* appellees have been on the San Jose waiting list for more than one year. (A. 3).

Pursuant to Article XXXIV, a low-rent housing plan developed by the Housing Authority of the City of San Jose was submitted to the voters in November of 1968. This plan called for the development of up to 1,000 units to be dispersed among various areas of San Jose with each structure having not more than four dwelling units. That proposal failed (A. 29).

The principal method by which housing authorities can provide safe, sanitary and decent housing for these thousands of poor people lies in the development of public housing projects with federal funds under the United States Housing Act of 1937 (42 U.S.C. §§ 1401, *et seq.*). In order to implement the Housing Act of 1937, California enacted The Housing Authorities Law (California Health and Safety Code §§ 34200 *et seq.*). The California law included specific legislative findings that unsanitary and unsafe dwelling accommodations exist in areas of the State where persons of low income are found to reside; that there is a shortage of safe and sanitary dwelling accommodations available at rents which low income people can afford; and that such conditions constitute a menace to the health, safety, morals and welfare of the residents of the State.

The Housing Authorities Law also provides that a public corporate body, to be known as the housing authority, can be activated in each county and city. That authority cannot act unless the local governing body declares a need therefor. Resolutions were passed declaring the need for a Housing Authority on March 18, 1941 by the Board of Supervisors of San Mateo County (A. 111) and on January 16, 1966 by the San Jose City Council (A. 25).

Once a housing authority has been activated, a professional staff is hired to develop plans for participation in leasing and construction programs. For new construction, the housing authority develops an application for a preliminary loan from the Department of Housing and Urban Development (hereafter, "HUD"). The loan money is used to pay for an option on a site, the preparation of project plans, and other development expenses.

Federal law requires consent of the local governing body of the city or county before a preliminary loan application is sent to HUD. Thus, even before money to purchase an option on a site is granted, experts from the local governing body, the local housing authority and the federal government have reviewed the plans and have determined not only that the project is needed but also that it is well planned, feasible as to cost and size, and complies with a myriad of technical requirements.

When a project has been completely planned and approved, the housing authority issues federally guaranteed bonds for sale to the public. Such bonds are not a debt or liability of the state or municipality. With the proceeds of the sale of bonds, the housing authority repays the preliminary loan, purchases land and constructs the units. An annual contribution contract between the housing authority and HUD, by which the purchasers of bonds are repaid, and a contract between HUD and the city or county for payments in lieu of taxes (usually 10 percent of the rents) to meet the cost of municipal services are negotiated. *No local funds* are used; the development and construction costs are borne completely by the federal government and by the tenants of the housing units.

Article XXXIV interjects the automatic referendum requirement after need for the housing program has clearly been ascertained, but before any of the funding and any final engineering work have been done. Approval or disapproval of a proposed project by voters is obviously not based on their expertise in the housing field. The question presented to the voters is whether they want low rent public housing in the local jurisdiction. No other type of federally funded local project is subjected to the same automatic referendum requirement.

Summary of Argument.

I.

The Doctrine of Hunter v. Erickson Applies to This Case.

Article XXXIV of the California Constitution, like the Akron City Charter in *Hunter v. Erickson*, 393 U.S. 385(969), singles out a particular type of action by the local legislative body — in this case, the authorizing of low rent public housing designed to benefit a particular group (urban poor consisting of a disproportionately high percentage of racial minorities) — and imposes a special obstacle, in the form of an automatic referendum, not put before any other group seeking similar action by the legislative body.

Appellants claim that Article XXXIV was adopted to "fill a gap in California in the referendum system." Article XXXIV does more than "fill the gap." City council resolutions on low rent public housing could, without violating equal protection, be subject to the general referendum provisions of the California Constitution. The vice of Article XXXIV is that it requires *only* low rent public housing projects to be submitted *automatically* to *a mandatory* referendum.

II.

Others Who Are Similarly Situated Are Not Subject to Article XXXIV.

Traditional equal protection analysis shows that Article XXXIV is unconstitutional. The test is whether the class to whom the legislation in question applies includes all who are similarly situated. Whether the similarly situated class in this case be defined narrowly or broadly, Article XXXIV fails to accord similar treatment to all its members.

The most appropriate similarly situated class in this case is substantially identical to the class defined in *Hunter*—all who seek to regulate the real estate market in their favor. Article XXXIV does not treat alike all who are in this class.

If the similarly situated class is limited to include only those with an interest in *public housing*, Article XXXIV treats *low rent* public housing differently because under California law "middle and normal market" public housing can be constructed without undergoing a mandatory automatic referendum.

If the class includes all who benefit from *federally funded* state or local projects, Article XXXIV treats similarly situated people dissimilarly by affecting only those who benefit from federally funded *low rent housing projects.*

If the class is defined as all who benefit from federal financial assistance to housing, Article XXXIV affects only those who would benefit from this particular type of housing.

Thus, however the similarly situated class is defined, Article XXXIV is discriminatory. Unless that discrimination can be justified, Article XXXIV must fall.

III.

Article XXXIV is Not Supported by Compelling State Interests.

The impact of Article XXXIV falls most heavily on racial minorities, and it expressly classifies on the basis of wealth. Both of these classifications are "Constitutionally suspect." In addition, decent housing is a fundamental interest of the poor. Each of these circumstances requires a showing of a compelling state interest.

The conclusion of the court below that Article XXXIV's "impact falls on the minority resulting in an impermissible burden which constitutes a substantial and invidious denial of equal protection" is amply supported by the record. The uncontroverted affidavits on the racial makeup of the local urban poor and the state and national studies cited in the record consistently document that urban poor who qualify for low rent public housing consist of a disproportionately high percentage of racial minorities.

Article XXXIV cannot be saved upon the ground that it does not expressly classify on the basis of race. This Court has said that it will look to the "ultimate effect" of the challenged provision. Because the impact of Article XXXIV falls most heavily on racial minorities, it is irrelevant whether it is expressed in terms of race.

Article XXXIV classifies on the basis of wealth by its express application to "persons or families who lack the amount of income which is necessary . . . to enable them to live in decent . . . dwellings." Even though cases in which this Court has applied the compelling state interest test because of a wealth classification also involved a fundamental interest of the poor, this Court has never stated that a fundamental interest is a prerequisite to the

compelling state interest test. However, if it is, the prerequisite has been met in this case because decent housing is a fundamental interest of the poor.

No compelling state or local interests justify an automatic referendum for low rent public housing projects. Article XXXIV is not, as appellants suggest, consistent with the policy underlying the California Constitutional provision requiring a vote before bonded indebtedness can be incurred for which the local property owners will be responsible. Unlike general obligation bonds, housing authority bonds are not a debt or liability of the municipality. No local funds are used. In addition, after the project is completed the local community receives payments in lieu of taxes to meet the cost of municipal services.

The long term environmental effects of public housing upon the community are not so unique or substantially different as to justify singling out this type of project for an automatic referendum. The housing projects of institutional design to which appellants refer are now prohibited by federal law. In addition, HUD guidelines recommend scattered site projects to prevent high concentration of low income tenants. Moreover, local governing bodies make many decisions, not subject to an automatic referendum, such as zoning, which have a greater impact on the environment than low rent public housing.

Finally, Article XXXIV is not only unsupported by local interests, but it is actually contrary to them.

ARGUMENT.

INTRODUCTION.

This brief makes three basic points:

1. The doctrine this Court expressed last term in *Hunter v. Erickson*, 393 U.S. 385 (1969), places Article XXXIV in violation of the equal protection clause by imposing a special obstacle of an automatic referendum before those who would benefit from low rent public housing—the ill-housed poor, consisting of a disproportionately high percentage of racial minorities.

2. Acts of a legislative body which benefit other classes of people similarly situated are not subject to such an automatic referendum.

3. Because Article XXXIV expressly classifies on the basis of wealth, involves a fundamental interest of the poor, and its burden falls most heavily on racial minorities, it must fall unless supported by compelling state interests. No such interests have been demonstrated.

I.

The Doctrine of Hunter v. Erickson Applies to This Case: The Automatic Referendum Provision Declared Unconstitutional in Hunter is Identical to Article XXXIV.

This Court decided substantially the same issue presented by this case in *Hunter*. The facts of this case and *Hunter* are strikingly similar. In *Hunter*, an amendment added to the City Charter of Akron by the initiative process prohibited enactment of any open housing ordinance unless first approved by city-wide referendum. Ruling the amendment violative of the equal protection clause, this Court stated:

> ". . . [T]he state may no more disadvantage *any particular group* by making it more difficult to

enact legislation in its behalf than it may dilute any person's vote or give any group a smaller representation than another of comparable size." 393 U.S. at 393. (Emphasis added).

Article XXXIV of the California Constitution, like the Akron City Charter, singles out a specific decision of a legislative body — the authorization of low rent public housing designed to benefit a particular group — urban poor consisting of a disproportionately high percentage of racial minorities — and subjects that decision to a special obstacle. That special obstacle is identical to the obstacle present in *Hunter* — a mandatory automatic referendum applicable only to a specific decision of a legislative body. Thus, not only must the poor first obtain approval of a low rent public housing project from both the city council and the housing authority but they must also then wage a campaign to win voter approval.

This special referendum obstacle is particularly burdensome to beneficiaries of low rent housing legislation. As a class, the poor tend to be less educated and more lacking in political know-how than other groups. This Court recognized in *Hunter* that minority groups may be particularly disadvantaged by a referendum requirement:

> "The majority need no protection against discrimination and if it did, a referendum might be bothersome but no more than that. Like the law requiring specification of candidates' race on the ballot, *Anderson v. Martin*, 375 U.S. 399 (1964), § 137 places special burdens on racial minorities within the governmental process. This is no more permissible than denying them the vote on an equal basis with others." 393 U.S. at 391.

Appellants argue that because a referendum involves the basic democratic process of voting, Article XXXIV cannot be invalidated on equal protection grounds. *Hunter* refutes this notion. It teaches that the voters may not retain for themselves an automatic mandatory vote on only certain decisions of a legislative body designed to benefit a particular class of people unless all such decisions which benefit each and every class of people are subject to the same requirement or unless there are compelling state interests which justify this discriminatory treatment:

> ". . . [I]nsisting that a State may distribute legislative power as it desires and that the people may retain for themselves the power over certain subjects may generally be true, but these principles furnish no justification for a legislative structure which otherwise would violate the Fourteenth Amendment. Nor does the implementation of this change through popular referendum immunize it." 393 U.S. at 392.

The policy articulated in *Hunter* should be reaffirmed in this case. Article XXXIV purports to give a greater voice to the people, but actually imposes a special burden on a particular group.

Appellant Shaffer claims that in three recent cases the courts of appeal have upheld state referendum statutes "which came far closer than does Article XXXIV to violating the principles of *Hunter v. Erickson* . . . ." (Appellant Shaffer's Brief, p. 58.) This is simply not true. The three cases cited are *Spaulding v. Blair*, 403 F. 2d 862 (4th Cir. 1968); *Ranjel v. City of Lansing*, 417 F. 2d 321 (6th Cir. 1969), cert. denied, 397 U.S. 980 (1970); and *Southern Alameda Spanish Speaking Organization v. City of Union City, California*, 424 F.

2d 291 (9th Cir. 1970). These three cases involve a common issue which has no relevance to this case or to *Hunter*. The issue in each was whether the *regular* initiative and referendum provision of the state general law or of a city charter could be used to overturn a zoning ordinance passed by the city council where racial motivation was alleged. None of these cases involved a *special* legislative procedure which required a certain type of decision by a legislative body to be submitted automatically to a referendum vote.

Appellants also claim that Article XXXIV was added to the California Constitution to "fill a gap in California in the referendum system" (Appellant Shaffer's Brief, pp. 6, 34) and for this reason can be distinguished from *Hunter* (Appellant City Council's Brief, p. 19). This claimed gap allegedly occurred when the California Supreme Court decided in *Housing Authority v. Superior Court*, 35 Cal. 2d 550 (1950) that a resolution adopted by a city council approving low rent public housing was not subject to the general referendum procedure provided for in Article IV, Sections 23 and 25, of the California Constitution.[3]

Article XXXIV, however does much more than fill the gap. Instead of making city council resolutions

[3]Article IV, Section 23 of the California Constitution gives the referendum power to the electors to approve or reject statutes. If a petition, signed by 5 percent of the voters voting in the last gubernatorial election, is submitted within a specified period of time to the Secretary of State asking that the statute in question be submitted to the electors, it must be placed on the ballot of the next general election.

Article IV, Section 25 gives the initiative and referendum powers to the electors of the city or county under procedures to be provided by the Legislature. California Elections Code, §3711 requires a petition containing the signatures of 10 percent of the electors in order to have the ordinance voted on in the next general election.

approving low rent public housing projects subject to the general referendum procedure under the California Constitution[4] (which would *permit* a referendum if a petition with the requisite numbers of signatures were filed), Article XXXIV *requires* all low rent public housing projects to be submitted *atuomatically* to a mandatory referendum vote without a petition. It is this unique automatic referendum requirement that makes Article XXXIV offensive to the equal protection clause.

II.

Others Who Are Similarly Situated Are Not Subject to The Automatic Referendum Imposed by Article XXXIV.

Even if this Court had never before considered the factual situation presented in *Hunter v. Erickson*, traditional equal protection analysis would show that Article XXXIV is unconstitutional. When legislation is challenged as violating the equal protection clause, the first question is whether the class to whom it applies includes

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[4]Such resolutions could be made subject to the general referendum procedure by a constitutional amendment. Additionally the State Legislature is given the power to determine what local decisions shall be subject to the initiative and referendum process. See, *e.g.*, California urban renewal legislation (California Health and Safety Code, §33101).

Appellant Shaffer states that "the court below was grosly misled in assuming that urban renewal was free of voter control" and that "the court below tacitly made an unsupported and erroneous assumption that no referendum process exists as to several aid programs adverted to by it." (Appellant Shaffer's Brief, p. 48-49.) This is a misstatement of the court's holding. The court below said: ". . . in California, state agencies may seek federal financial assistance without the *burden of first* submitting the proposal to a referendum for all projects except low income housing" (A. 176-177). (Emphasis added). The court did not say that these projects are absolutely free of voter control, but only that they are not subject to the special automatic referendum requirement.

all who are similarly situated.[8] *Skinner v. Oklahoma, ex rel. Williamson*, 316 U.S. 535 (1942). If others similarly situated are not included within the class reached by the legislation the court must then determine whether there is a rational basis or a compelling interest to justify such different treatment. *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 628 (1969). In this case, as will appear, Article XXXIV does not treat alike all who are similarly situated, the compelling state interest test is applicable, and Article XXXIV fails to meet that test.

Whether the similarly situated class in this case be defined narrowly or broadly, Article XXXIV fails to accord similar treatment to all members of the class. For example, even if the similarly situated class were defined to include only persons having an interest in public housing—the narrowest conceivable similarly situated class—the California statutory scheme would still be found not to treat all members of the class alike. Middle and normal income housing (but not low income housing) can be constructed by a public agency without a prior vote of the people, as will be shown.

A. Those Who Are Similarly Situated But Not Subject to the Automatic Referendum Are the Same as Those Described in Hunter.

The similarly situated class in *Hunter* was defined as all "those who sought to regulate real property transactions . . . ." The Court concluded that certain members of that class—those who would benefit from open housing legislation — were treated differently from those

[8]Tussman & tenBroeck, *"The Equal Protection of the Laws,"* 37 *Calif. L. Rev.* 341, 346 (1949).

who would "regulate real property transactions in the pursuit of other ends." As specific examples, the Court noted that Akron's automatic referendum system did not "affect tenants seeking more heat or better maintenance from landlords, nor those seeking rent control, urban renewal, *public housing* or new building codes." 393 U.S. at 391. (Emphasis added).

The similarly situated class in this case is substantially identical to the class defined by this Court in *Hunter*—all who seek to regulate the real estate market in their favor. The only difference is the interest of the people affected by the hurdle of an automatic referendum. Instead of burdening those who seek open housing legislation as in *Hunter*, Article XXXIV burdens those who seek to benefit from low rent public housing —poor families who consist of a disproportionately high percentage of racial minorities.

Appellants urge that the similarly situated class should be defined as all who would benefit from public housing and that, because all who are eligible for public housing—low income families—are treated alike, there is no denial of equal protection. To limit the similarly situated group to the narrow subject of the challenged legislation, as appellants urge, would strip the equal protection clause of its meaning. Adoption of appellants' approach would mean, for example, that all legislation designed to benefit the poor could constitutionally be subjected to an automatic referendum because all the poor would be treated alike—only the poor would be similarly situated. Under appellants' theory a constitutional amendment or a state statute could require a majority vote of the people before any welfare legislation would become effective.

If appellants' argument is sound, this Court should have limited the similarly situated class in *Hunter* to all who benefit from open housing legislation—racial minorities. The Court in *Hunter* quite properly reached a different conclusion. The policy adopted in *Hunter*—to define a class in terms of the general subject matter of the challenged legislation—should also be applied in this case.

B. Article XXXIV Treats Similarly Situated People Dissimilarly, Even If, as Appellants Urge, the Class Is Limited to Those Who Would Benefit From All Types of Public Housing Constructed or Acquired by the State.

The appellants have asserted that California treats all kinds of public housing alike and that the only kind of housing a governmental agency in California can construct, other than housing to which Article XXXIV applies, is housing for state officials and university personnel (Appellant Shaffer's Brief, p. 44; Appellant City Council's Brief, p. 13). This assertion is in error.

Although it was stipulated that the only public housing currently *in existence* in California is low cost public housing, there was no stipulation that the latter is the only kind of public housing that *can be* developed in California.

Under present California law, a Renewal Area Agency can be formed by a local governing body to issue bonds for the purpose of developing urban housing, expressly including construction of "low income, middle income and normal market housing." (Normal market housing is defined as housing for persons other than those of low and middle income). California Health and Safety Code, §§ 33701, *et seq.* While certain approvals by landowners within the boundaries of the agency are

initially required, once those approvals are obtained, no further approvals are required to initiate a middle income and normal market housing program. However, such an agency would have to seek voter approval via the mandatory referendum required by Article XXXIV for proposed low income housing only.

In addition, California statutory law also authorizes public housing for agricultural laborers "without regard to whether such persons and families have low income." California Health and Safety Code, §36051. Here again, persons who benefit from publicly assisted housing can avoid the requirements of Article XXXIV *if, but only if, they are not poor.*

Thus, assuming *arguendo* that appellants' definition of the similarly situated class is sound, Article XXXIV violates the equal protection clause on its face by singling out for an automatic referendum vote only those public housing projects designed to benefit the poor.

C. Article XXXIV Treats Similarly Situated People If, as the Court Below Found, the Class is Defined as All Who Would Benefit From Federally Funded State or Local Projects.

The court below selected as the similarly situated class all who would benefit from other types of federally funded local projects. Hundreds of federally funded local projects are administered through the state or local communities. Low rent public housing is the *only* type of federally funded project in California requiring voter approval as a prerequisite to receiving federal aid.

Appellant Shaffer claims that the lower court held that either all or none of the federally funded local projects must be submitted to an automatic referendum requirement and that under no circumstances will dif-

ferent treatment be tolerated. (Appellant Shaffer's Brief, p. 54). This implication is wrong. The lower court, following the teaching of *Hunter v. Erickson*, 393 U.S. at 392, stated that in order to single out one type of legislation designed to benefit a particular class of people and subject that legislation to a special hurdle of requiring voter approval, there must be a showing of a compelling state interest to justify this different treatment (A. 176-177).

Moreover, the burden is on appellants to demonstrate that the interests of the local community in low rent public housing are so substantially different from all other types of federally funded local projects as to justify the automatic referendum requirement. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

D. Article XXXIV Treats Similarly Situated People Disdainfully if the Class is Defined as All Who Benefit From Federal Financial Assistance to Housing.

Another arguable definition of the similarly situated class would include all who benefit from federal assistance to housing. Adopting this definition leaves unchanged the discriminatory impact of Article XXXIV.

Federal financial assistance to moderate income housing is made through insured mortgage programs administered by the Federal Housing Authority and the Veterans Administration, reduced interest rates for mortgages administered by Federal National Mortgage Association and federal loan guarantees for private bank loans and subsidies to sponsors of particular housing projects to assist them in getting private financing. 12 U.S.C. §(1)(d)(3). None of the beneficiaries of these federal assistance programs for housing is required to secure a referendum vote under California law. Article

XXXIV singles out *only* the beneficiaries of federally assisted low rent housing.

Thus, however the similarly situated class is defined, Article XXXIV is discriminatory and unless that discrimination can be justified Article XXXIV must fall.

III.

Article XXXIV Is Not Supported By Compelling State Interests.

A. There Must be a Compelling State Interest in Order to Uphold Article XXXIV.

Legislation challenged as violating the equal protection clause because it burdens or benefits a particular class of people requires determination of whether the classification is justified by a *legitimate* governmental interest. *Douglas v. California*, 372 U.S. 353 (1963). However, in certain instances, the challenged legislation will be upheld only if *in addition* there is a *compelling* state interest to support treating one class of people differently from others who are similarly situated.

The compelling state interest doctrine in turn will be invoked when the classification in question fits one or both of two characterizations. First, classifications which are "constitutionally suspect", *McLaughlin v. Florida*, 379 U.S. 184, 194 (1964), or "traditionally disfavored", *Harper v. Virginia Board of Elections*, 383 U. S. 663, 668 (1966), require a compelling state interest for their salvation. Classifications based on race or wealth are both "constitutionally suspect", *Hunter v. Erickson*, 393 U.S. 385 (1969); *Griffin v. Illinois*, 351 U.S. 12 (1956). Second, if the interests of the people who fit within this classification are "fundamental", the compelling state

interest test is applied regardless of the basis of the classification. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

Article XXXIV must pass the compelling state interest test under both standards. The impact of Article XXXIV falls most heavily on racial minorities; it expressly classifies on the basis of wealth. Both classifications are constitutionally suspect. In addition, Article XXXIV involves decent housing, which is a fundamental interest of the poor.

1. *The Impact of Article XXXIV Falls Most Heavily on Racial Minorities.*

The court below stated:

> "Although Article XXXIV does not specifically require a referendum for low income projects which will be predominantly occupied by Negroes or other minority groups, the equal protection clause is violated if a 'special burden' is placed on those groups by the operation of the challenged provision, if 'the reality is that the law's impact falls on the minority.' *Hunter v. Erickson, supra,* at 391." (A. 174).
>
> "... [T]he law's impact falls on the minority resulting in an impermissible burden which constitutes a substantial and invidious denial of equal protection." (A. 175).

This conclusion is amply supported by the record.[6]

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[6]An uncontroverted affidavit of the senior planner for the Santa Clara County Planning Department stated that only 5 percent of all the housing units occupied by white non-Mexican-Americans were in dilapidated or deteriorated condition, while 23 percent of the housing units occupied by Mexican-Americans and 20 percent of the units occupied by non-whites were in dilapidated or deteriorated condition (A. 62.)

Appellant Shaffer presents two arguments in support of her contention that Article XXXIV does not discriminate against racial minorities: First, she disputes the factual findings of the District Court; and secondly she contends that because there is no express racial classification in Article XXXIV, it is valid. Appellant Shaffer's initial argument relies upon statistics outside the record to dispute the findings of the District Court that the impact of Article XXXIV falls most heavily on racial minorities. Even assuming the propriety of such reliance, these statistics cover only Santa Clara County; they ignore San Mateo County, state and national studies. Since a state constitutional amendment is under attack, the state-wide statistics were and are relevant to the court's determination. Reports and studies cited in the record consistently document that the urban poor consist of a disproportionately high percentage of racial minorities.[7]

Furthermore, Appellant Shaffer's presentation of these statistics is seriously misleading. The statistics cited are from the *Housing Study, Phase I—Public Housing For City of San Jose, California,* Kaiser Engineers of Oakland, California, Report No. 70-10-R, March, 1970 (hereafter "Kaiser Report") which appellant has used in conjunction with other affidavits in an attempt to show that the ratio of racial minorities to poor people in Santa Clara County is the same as the ratio of racial minorities to the overall population (Appellant Shaffer's Brief, p. 30). Isolated and selected statistics from different reports and affidavits have been combined to support appellant's position, but the conclusions reached by the reports and affidavits taken as a whole are ignored.

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[7]See pp. 24-25, *infra.*

The Kaiser Report itself concluded that racial minorities comprise a disproportionately larger number of low income households (Kaiser Report, p. V-3). Courts have noted as a fact that low income urban families have a disproportionately high percentage of minority groups. In *Southern Alameda Spanish Speaking Organization v. City of Union City, California*, 424 F. 2d 291 (9th Cir. 1970), the court said:

> "Given the recognized importance of equal opportunities in housing, it may well be, as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan, as initiated or as it develops accommodates the *needs of its low-income families, who usually—if not always—are members of minority groups.*" 424 F.2d at 296. (Emphasis added).

National studies on housing needs have consistently found that a disporportionate percentage of the urban poor who qualify for public housing is composed of racial minorities. A majority of the persons living in low rent public housing which has already been built are non-white. HUD Report, Statistical Abstract, 1968. Moreover, a government report cited in the record below estimated that the total non-white occupancy by individuals of public housing units was approximately three-fifths to two-thirds. *Building The American City*, Report of the National Commission on Urban Progress to the Congress and to the President of the United States, Government Printing Office, House Document 91-34, p. 114 (hereafter, "Douglas Report").[8]

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[8]Because of the adverse effect on the development of public housing, the Douglas Report has recommended that states eliminate these cases requiring automatic submission of housing projects to popular referendum. Douglas Report, pp. 190-191.

If the economic status of minority groups in general is analyzed, the greater incidence of low income is clearly evident. In 1967, 41 percent of the nonwhite population was poor, compared with only 12 percent of the white population. Douglas Report, p. 45. Another housing study cited in the record below found that 30% of all urban poor persons are non-white and that 61% of all non-white households in standard Metropolitan Statistical Areas had incomes of $4,000 or less, compared with 25% of the white housing. *More Than Shelter, Social Needs in Low and Moderate Income Housing,* Report of the National Commission on Urban Problems to the Congress and to the President of the United States, Government Printing Office, Research Report No. 8, p. 35 (1968).

Appellant Shaffer, in her second argument, would distinguish Article XXXIV from other cases involving racial classifications on the ground that there is no express racial classification in the challenged provision. No such requirement exists. Clever and manipulative legislative drafting which carefully avoids express racial classifications will nevertheless fail if, in fact, the law's impact falls most heavily on racial minorities. As early as 1886, a legislative provision, completely neutral on its face, was found to violate the equal protection clause because it was administered to discriminate against orientals. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). " . . . [T]hat which cannot be done by express statutory prohibition cannot be done by indirection." *Anderson v. Martin,* 375 U.S. 399, 404 (1964).

In *Reitman v. Mulkey,* 387 U.S. 369 (1967), this Court invalidated a California constitutional amendment designed to "constitutionalize" the right to dis-

criminate privately in the sale or lease of property by prohibiting open housing legislation. Although the amendment was carefully drafted in neutral terms and made no mention of race, the Court found that its impact fell most heavily on racial minorities. The Court said it would look to the "ultimate effect" of the challenged provision and not be restricted to its express terms. The "ultimate effect" of Article XXXIV has been to defeat a number of low-rent housing projects that would benefit low income families,[9] a disproportionately high percentage of which are composed of racial minorities.

Appellant Shaffer has also attempted to distinguish *Hunter* on the same basis, arguing that the legislation in that case involved an express racial classification. *Hunter* gives no hint that the result would have been different absent an express reference to race. To the contrary, the Court indicated that the result would have been the same:

> "... [A]lthough the law on its face treats Negro and white, Jew and gentile, in an identical manner, *the reality is that the law's impact falls on the minority.*" 393 U.S. at 391. (Emphasis added).

The policy enunciated in *Hunter* is clear: Legislation designed to benefit racial minorities cannot be subjected to the special obstacle of an automatic, mandatory referendum. If the impact of the automatic referendum falls most heavily on racial minorities, it is irrelevant whether the challenged legislative scheme itself is expressed in terms of race.

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[9]From November, 1950 to June, 1968, 31,071 low-rent units were proposed on ballots across California. Of the propositions submitted, approval was denied for the construction of 14,997 units (A. 34-37).

2. *Article XXXIV Expressly Classifies on the Basis of Wealth.*

Independent of the racial classification of Article XXXIV, but equally requiring imposition of the compelling state interest test, Article XXXIV expressly classifies on the basis of wealth. Persons of low income are defined in Article XXXIV as:

> ". . . persons or families who lack the amount of income which is necessary . . . to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding."

Thus, poor families eligible for low rent public housing are expressly singled out and burdened by a unique automatic referendum requirement before remedial housing legislation can become effective. The equal protection clause prohibits treating the poor differently, absent the showing of a compelling state interest.[10] In *Edwards v. California*, 314 U.S. 160 (1941), Mr. Justice Jackson in a concurring opinion stated:

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[10]Appellants claim that "if the poor want the affluent to provide them with housing, . . . they should expect and be willing to accept the 'burden' of receiving the willing consent of a simple majority of those persons who are expected to help pay for the housing and its correlative needs." (Appellant City Council's Brief, p. 13.) Appellant Shaffer claims that "there may be a *moral* duty to provide housing for those economically disadvantaged, or it may be prudent to do so as a prophylactic against social upheaval. But the constitution imposes no command to do so, and therefore the constitution imposes no command as to how the State is go to about determining when and if it shall do so." (Appellant Shaffer's Brief, p. 45.) This position stated by both appellants is clearly antithetical to this Court's interpretation of the equal protection clause. No claim has been made that local communities must construct low rent public housing. The court below held only that a state may not place special obstacles in the way of enactment of legislation authorizing the construction of low rent public housing just as this Court held in *Hunter* that special obstacles may not be placed in the way of passage of open housing legislation.

". . . We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify or limit his rights as a citizen of the United States. 'Indigence' in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed or color." 314 U.S. at 184-185.

This Court has since consistently ruled that poverty is no basis for treating people differently. *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956). In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), the provisions of the Virginia Constitution requiring payment of a poll tax as a voting qualification were held violative of the equal protection clause. The Court stated, "Lines drawn on the basis of *wealth or property, like those of race* (citation omitted), are traditionally disfavored." 383 U.S. at 668. (Emphasis added).[11]

This doctrine was reaffirmed last year in *McDonald v. Board of Election Commissioners of Chicago*, 394

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[11]Although disagreeing with the majority's adoption of this proposition, dissenting members of the Court have recognized that a classification based on wealth required a showing of a compelling state interest:

". . . The 'compelling interest' doctrine has two branches. The branch which requires that classifications based upon 'suspect' criteria be supported by a compelling interest apparently had its genesis in cases involving racial classification, which have at least since *Korematsu v. United States*, 323 U.S. 214, 216 (1944) been regarded as inherently 'suspect.' The criterion of 'wealth' apparently was added to the list of suspects as an alternative justification for the rationale in *Harper v. Virginia Bd. of Elections*, 383, U.S. 663, 668 (1966) in which Virginia's poll tax was struck down." *"Shapiro v. Thompson*, 394 U.S. at 658-659 (Harlan, J., dissenting).

U.S. 802 (1969). Although the classification in *McDonald* was ultimately held not based on wealth, the Court, in determining whether to apply the compelling state interest standard, noted that:

> "[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race, *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966), two factors which would independently render a classification highly suspect and thereby demanding a more exacting judicial scrutiny." 394 U.S. at 807-809.

Appellee must candidly say that in the cases in which this Court has applied the compelling state interest test because the classification was based on wealth, a fundamental interest of the poor was also at stake. The Court, however, has never stated that such a fundamental interest is a prerequisite to the compelling state interest test. However, if it is, the prerequisite has been met in this case because decent housing is a fundamental interest of the poor.

3. *Housing Is a Fundamental Interest of the Poor.*

Although this Court has never had the opportunity to consider separately for purposes of equal protection analysis whether housing is a fundamental interest, it has in the past commented on the importance of housing. In *Block v. Hirsh,* 256 U.S. 135, 156 (1921), the Court said that "housing is a necessity of life." More recently the Court in *Shapiro v. Thompson,* 394 U.S. 618 (1969), stated that "the very means to subsist—food, shelter and other necessities of life . . ." is the matter at stake for the plaintiffs. 394 U.S. at 627. Just as adequate housing is necessary for an individual's development, substandard housing and discrimination in

housing are root causes of all the problems facing ghetto inhabitants. Studies have documented the relationship between inadequate housing and inability to learn, between poor housing and health, and between unsuitable housing and unsuitable emotional development.[12]

This Court has defined as fundamental other interests which are no more basic than poor peoples' need for decent housing. Interests which have been found fundamental are *inter alia*, the right to travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969); the right to vote, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); the right to political allegiance, *Williams v. Rhodes*, 393 U.S. 23 (1968); the right to procreation, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); rights with respect to criminal procedure, *Griffin v. Illinois*, 351 U.S. 12 (1956); and education, *Brown v. Board of Education*, 347 U.S. 483 (1954). In each of these cases, because a fundamental interest of those who were included in the classification was involved, the compelling state interest test was applied.

Surely, therefore, the interest of the poor in securing "safe and sanitary housing without overcrowding" is also fundamental.

B. No Compelling State or Local Interests Justify an Automatic Referendum For Low Rent Public Housing Projects.

Appellants must demonstrate a compelling state interest in order to sustain the challenged legislation because the impact of Article XXXIV falls most heavily

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[12]Comment, *Decent Housing As A Constitutional Right, 42 U.S.C. §1893, Poor People's Remedy for Deprivation*, 14 How. L.J. 338, 340 (1968); Comment, *Tenant Interest Representation; Proposal For A National Tenant's Association*, 47 Texas L. Rev. 1160, 1172-1173 (n. 61) (1969).

on racial minorities, expressly classifies on the basis of wealth and involves the fundamental interest of decent housing. Separate consideration of each interest asserted by appellants shows that they have failed to carry this burden.

1. *The Fiscal Interests Asserted by Appellants Are Not Substantial: They Are Less Significant Than the Fiscal Interests Underlying Other Types of Decisions of Legislative Bodies Not Subject to an Automatic Referendum Requirement.*

This Court has never held that an economic interest constitutes a compelling state interest.[13] Moreover, the economic burden of low rent public housing on local communities is either insignificant or non-existent.

Appellant Shaffer suggests that Article XXXIV was approved by the voters to rectify decisions of the California Supreme Court which eroded the principles of sound fiscal control imposed upon cities counties and school districts by the provisions of Article XIII, Section 40 of the California Constitution (previously Article XI, Section 18, renumbered without change on June 3, 1970), (Appellant Shaffer's Brief, p. 34). Article XIII, Section 40, however, relates to long term indebtedness for which property owners within the particular city, county or school district will be responsible. Hence, it is incongruous to argue in the circumstances here that Article XXXIV was enacted to "rectify the erosion"

[13]This Court recently held in *Shapiro v. Thompson*, 394 U.S. 618 (1969) that saving of state funds is an insufficient interest to support a classification of nonresident poor who otherwise qualify for welfare payments. "The saving of welfare costs cannot justify an otherwise invidious classification." 394 U.S. at 633.

The Court found in *Shapiro* that the administrative interests asserted by the State failed to meet the traditional rational relationship test, much less the required compelling State interest. 394 U.S. 638.

(Appellant Shaffer's Brief, p. 34) where property owners will not be responsible for long term indebtedness incurred by a housing authority.

Article XIII, Section 40, does impose the requirements of a referendum upon the incurring of certain types of debt. However, there are a substantial number of methods used in financing capital projects available to the agencies named in Article XIII, Section 40, which may well impose a financial burden upon property owners and other persons through property taxes and user charges or a combination thereof, but which will not be subject to the automatic referendum requirement. For example, charter cities may under appropriate circumstances, issue revenue bonds without a referendum as to whether such indebtedness should be incurred. See *City of Santa Monica v. Grubb* 245 Cal. App. 2d 718 (1965); *cf.* also, *Cipriano v. City of Houma,* 395 U.S. 701 (1969), which discusses upon whom the financial burden may fall. Financing of capital improvements by a sale-leaseback or a lease-leaseback method in which the lessee agency is obligated to make lease payments from year to year, which payments may be derived from general property tax levies, is not subject to an automatic referendum. *cf.* California Government Code, §§ 6500, *et seq.; Dean v. Kuchel,* 35 Cal. 2d 444 (1950); Rev. Rul. 63-20, 1963-1 C.B. 24. Additionally, capital projects may be financed through installment purchase contracts payable from revenues received from the facility acquired.

While as noted above, such financing methods are not subject to Article XIII, Section 40 of the California Constitution "because the words of the 1879 Constitu-

tion did not fit new or ingenious devices" (Appellant Shaffer's Brief, p. 34), the courts have recognized these new methods and approved them. In addition to those financing methods, California has countless special agencies and districts which are not subject to Article XIII, Section 40. Thus it is difficult to follow the argument that Article XXXIV was enacted as the means to regain the control lost by the voters under *Housing Authority v. Dockweiler*, 14 Cal. 2d 437, (1939).[14] If no local indebtedness is incurred by a housing authority in the implementation of its program, whether or not that program is subject to automatic referendum, the proposed analogy of Article XIII, Section 40, is not apt.

The appellants claim that local districts have a significant financial commitment because they must agree to provide municipal services to the project and accept a percentage of the rental income in lieu of property taxes.[15] These, however, are simply not the types of interests that are as a general rule subjected to a constitutionally mandated vote by residents of the community. Furthermore, judgments which have a much greater financial impact on the voters than the decision to build

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[14]The California Supreme Court held in *Dockweiler* that housing authorities were not subject to the debt limitation of the California Constitution. The Court went on to state that even if it were assumed that housing authorities were subject to the debt limitation this type of debt would not constitute a debt within the meaning of the Constitution because its bonds are payable exclusively from the revenue generated by the project and by federal aid. 14 Cal. 2d at 460.

[15]Appellant Shaffer lists "streets, sewers, drain and lighting" as municipal services that are provided at City expense. (Appellant Shaffer's Brief, p. 35). This is not true. These public improvements are defined as being a part of the "project" and are paid for out of housing authority funds. California Health and Safety Code §34212.

100 percent federally funded low rent public housing are not subject to an automatic referendum. These include, *inter alia*, decisions to raise property taxes, to let long term contracts, to enter into financing arrangements with other agencies which involve incurring long term bonded indebtedness,[16] to build new roads, streets and parks and countless other such day-to-day governmental decisions.

The local unit of government does not agree to provide the services covered by real and personal property taxes without charge, but instead agrees to provide these services in return for a negotiated amount, which is usually 10 percent of the rent received from the project. There is no evidence that this amount will be insufficient to cover the costs of providing public services to the project. Indeed, if the project is constructed in a slum clearance area, the local governing body may well collect more revenue from the 10 percent rental income that it had been collecting from taxes on the property prior to construction of the project. Furthermore, the costs of providing services such as fire and police protection and code enforcement may have been significantly higher in the slum area before construction of the project. Thus, the local community will be financially benefited rather than burdened by low rent public housing.

Property tax exemptions are not confined to public housing projects. The California Constitution and California Revenue and Taxation Code grant numerous exemptions from taxation without any requirement that

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[16]See *Westbrook v. Mihaley*, 2 Cal. 3d 765, 791-792 (1970), in which the California Supreme Court discusses the various methods used in incurring long term bonded indebtedness without a vote requirement.

an organization whose property is exempt from taxation obtain voter approval before acquiring valuable nonexempt property.[17]

Tax exempt organizations in many instances are able to acquire valuable property, thereby removing it from local tax roles, without voter approval. Municipal services such as fire and police protection are still provided after this property becomes exempt from taxation. The revenue loss through these property tax exemptions is greater than the loss through public housing projects because there is no requirement for payments in lieu of property taxes as there is for public housing.

The fiscal interests asserted by appellants are so much less significant than other decisions made by local governing bodies that do not require a mandatory referendum that they cannot be considered reasonably related to the purpose of the referendum. Much less can they be considered a compelling state interest.

2. *The Long Term Environmental Effects of Public Housing Upon the Community Are Not so Unique or Substantially Different to Justify Singling Out This Type of Project for an Automatic Referendum.*

Appellants claim that housing projects "of institutional design and mammoth size" strongly influence the environment of a community and therefore justify this special vote requirement. (Appellant Shaffer's Brief, p. 36). This claim has no factual basis. The

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[17]E.g., California Constitution, Article XIII, §§ 1-¼(b); California Revenue and Taxation Code, §§ 200-214. Exempt property includes *inter alia* property used for libraries, schools and museums (*id.*, § 202) property used exclusively for religious, hospital, scientific or charitable purposes (§ 214); the homes of disabled war veterans (§ 205.5); the property of colleges (§ 203); that of orphanages (§ 207) and the property of churches (§ 206).

public housing project defeated in San Jose was a proposal for small four unit residential structures to be dispersed throughout the city (A. 29). Federal law now prohibits the construction of "mammoth housing projects of institutional design."[18] In addition, HUD guidelines recommend scattered site projects to prevent high concentration of low income tenants. Any proposal to locate housing only in areas of racial concentration will be *prima facie* unacceptable and will be returned to the local authority for further consideration.[19]

That such projects incompatible with the community have been built in slum clearance areas in the past and have "perpetuated rather than overcome racial segregation" is a direct result of refusals to accept the type of public housing proposed in San Jose and now required by HUD guidelines. The Douglas Report documented the fact most forcefully:

> "The general tendency in recent years on the part of too many public housing authorities has been to emphasis high-rise and large-scale

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[18]42 U.S.C. § 1415(11).

[19]Low Rent Housing Pre-Construction Handbook, R.H.A. 7410.1 Chapt. 1, Section 1 a—Nondiscrimination in Housing (June, 1970). See also Local Public Agency Letter #318, Supplements 2 and 3 of Feb. 21, 1968, as reported in 3 CCH Urban Affairs Rptr. ¶ 17,560, setting as a prerequisite for federal financial assistance for public planning an indication of how the proposed projects meet the goal of reducing residential concentration of minority groups within the community.

A federal court has recently blocked proposals to locate projects in racially concentrated areas and ordered low rise, scattered site projects in white neighborhoods. Judgment Order, *Gautreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969).

In *Hicks v. Weaver*, 302 F. Supp. 619 (E.D. La. 1969), the court granted a preliminary injunction against construction of a housing project in an already racially concentrated area.

apartment projects. *This trend has been caused by many factors, notably the refusal of the dweller in the suburbs and in the outer and middle-class sections of the cities to accept public housing.* This, in turn, has driven public housing closer to the center of the cities where land costs are high. The high cost of land and the continued immigration of low income families have then led public housing authorities to construct high rise buildings in order to get so many housing units as possible on each acre of land. . . . Suburbanites and middle-class residents who criticized the huge projects in the Central city and who, at the same time, opposed any project in their neighborhoods, *should realize that their refusal to permit the diffusion of public housing is a major factor in creating the concentration they deplore.*" Douglas Report p. 123. (Emphasis added).

Local governing bodies make many decisions that have a greater environmental impact on the local communities without an automatic referendum. For example, zoning legislation has a much greater impact on the environment because zoning determines whether a community is to be low density residential, high density residential, commercial or industrial. Because of the tax consequences the financial implications of zoning are also very significant. Other examples which impose comparable consequences are city planning and urban renewal.

Appellants cannot assert that the local community has a compelling interest in subjecting low rent public housing projects to an automatic referendum requirement when it does not place the same requirement on other projects or laws which have as much or greater impact on the community's environment.

3. *Article XXXIV Is Contrary to the Interests of Local Communities.*

Instead of supporting local interests, as appellants claim, Article XXXIV works against the overall interests of the local communities.

Local communities have a strong interest in eradicating blighted areas. One of the most effective ways to expedite slum clearance is to relocate families living in overcrowded, unsanitary housing to low rent public housing units disseminated throughout the district.

The history of Article XXXIV is replete with instances in which the local governing bodies and housing authorities have determined, after careful evaluation of studies on the housing needs of the community, that there is a need for low rent public housing, only to have their considered judgment reversed. As a consequence, the slum areas remain and poor families continue to live in the overcrowded unsanitary housing with all its debilitating effects. Because of Article XXXIV, the interests of the local community considered as a whole become secondary to the interests of a majority living in middle class areas. Article XXXIV is a vehicle used by this majority to keep the poor and racial minorities in the slums.

Conclusion.

For the foregoing reasons it is respectfully submitted that the judgment below holding Article XXXIV of the California Constitution violative of the equal protection clause of the Fourteenth Amendment should be affirmed.

WARREN CHRISTOPHER,
DONALD M. WESSLING,
611 West Sixth Street,
Los Angeles, Calif. 90017,
Attorneys for Appellee Housing Authority of the City of San Jose.

Of Counsel:
O'MELVENY & MYERS,
DONALD R. HODGMAN,
JOHN R. PHILLIPS,
A. ROBERT PISANO,
STEPHEN J. STERN,
611 West Sixth Street,
Los Angeles, Calif. 90017.

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